

**Rule 5. Discretionary appeals from interlocutory orders.**

(a) Petition for permission to appeal. An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the clerk of the appellate court with jurisdiction over the case within 20 days after the entry of the order of the trial court, with proof of service on all other parties to the action. A timely appeal from an order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court determines is not final may, in the discretion of the appellate court, be considered by the appellate court as a petition for permission to appeal an interlocutory order. The appellate court may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of this rule.

(b) Fees and copies of petition. For a petition presented to the Supreme Court, the petitioner shall file with the Clerk of the Supreme Court an original and five copies of the petition, together with the fee required by statute. For a petition presented to the Court of Appeals, the petitioner shall file with the Clerk of the Court of Appeals an original and four copies of the petition, together with the fee required by statute. The petitioner shall serve the petition on the opposing party and notice of the filing of the petition on the trial court. If an order is issued authorizing the appeal, the clerk of the appellate court shall immediately give notice of the order by mail to the respective parties and shall transmit a certified copy of the order, together with a copy of the petition, to the trial court where the petition and order shall be filed in lieu of a notice of appeal.

(c) Content of petition.

(c)(1) The petition shall contain:

(c)(1)(A) A concise statement of facts material to a consideration of the issue presented and the order sought to be reviewed;

(c)(1)(B) The issue presented expressed in the terms and circumstances of the case but without unnecessary detail, and a demonstration that the issue was preserved in the trial court. Petitioner must state the applicable standard of appellate review and cite supporting

28 authority;

29 (c)(1)(C) A statement of the reasons why an immediate interlocutory appeal should be  
30 permitted, including a concise analysis of the statutes, rules or cases believed to be  
31 determinative of the issue stated; and

32 (c)(1)(D) A statement of the reason why the appeal may materially advance the  
33 termination of the litigation.

34 (c)(2) If the appeal is subject to assignment by the Supreme Court to the Court of  
35 Appeals, the phrase "Subject to assignment to the Court of Appeals" shall appear  
36 immediately under the title of the document, i.e. Petition for Permission to Appeal.  
37 Appellant may then set forth in the petition a concise statement why the Supreme Court  
38 should decide the case in light of the relevant factors listed in Rule 9(c)(9).

39 (c)(3) The petitioner shall attach a copy of the order of the trial court from which an  
40 appeal is sought and any related findings of fact and conclusions of law and opinion.

41 (d) Service in criminal and juvenile delinquency cases. Any petition filed by a  
42 defendant in a criminal case originally charged as a felony or by a juvenile in a  
43 delinquency proceeding shall be served on the Criminal Appeals Division of the Office of  
44 the Utah Attorney General.

45 ~~(d)~~ (e) Answer. Within 10 days after service of the petition, any other party may file  
46 an answer in opposition or concurrence. If the appeal is subject to assignment by the  
47 Supreme Court to the Court of Appeals, the answer may contain a concise response to the  
48 petitioner's contentions under Rule 5(c) . An original and five copies of the answer shall  
49 be filed in the Supreme Court. An original and four copies shall be filed in the Court of  
50 Appeals. The respondent shall serve the answer on the petitioner. The petition and any  
51 answer shall be submitted without oral argument unless otherwise ordered.

52 ~~(e)~~ (f) Grant of permission. An appeal from an interlocutory order may be granted only  
53 if it appears that the order involves substantial rights and may materially affect the final  
54 decision or that a determination of the correctness of the order before final judgment will

55 better serve the administration and interests of justice. The order permitting the appeal  
56 may set forth the particular issue or point of law which will be considered and may be on  
57 such terms, including the filing of a bond for costs and damages, as the appellate court  
58 may determine. The clerk of the appellate court shall immediately give the parties and  
59 trial court notice by mail of any order granting or denying the petition. If the petition is  
60 granted, the appeal shall be deemed to have been filed and docketed by the granting of the  
61 petition. All proceedings subsequent to the granting of the petition shall be as, and within  
62 the time required, for appeals from final judgments except that no docketing statement  
63 shall be filed under Rule 9 unless the court otherwise orders.

64 (f) (g) Stays pending interlocutory review. The appellate court will not consider an  
65 application for a stay pending disposition of an interlocutory appeal until the petitioner  
66 has filed a petition for interlocutory appeal.

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